

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

00-CR-6155L

v.

ROBERT J. AMICO, a/k/a
ROBERT M. AMICO,

Defendant.

On March 7, 2008, defendant Robert Amico (“Amico”) was sentenced on his guilty plea principally to a term of 132 months, which was within the United States Sentencing Guidelines for his offense. Amico was granted voluntary surrender by the Court and is now ordered by the Bureau of Prisons to surrender to the McKean Federal Correctional Institution on April 22, 2008. Amico, now represented by counsel, moves to vacate the sentence pursuant to 28 U.S.C. § 2255 and to stay the execution of the sentence and his surrender to the Bureau of Prisons. (Dkt. # 653). Amico’s attorney also moves to withdraw as counsel relating to the § 2255 petition. He also seeks a stay of Amico’s sentence and requests appointment of new counsel on the § 2255 petition (Dkt. # 654).

The motions to stay the execution of sentence are both denied. Defendant must report as directed by the Bureau of Prisons on April 22, 2008 or face additional charges for bail jumping. If

Amico's trial counsel seeks withdraw as counsel on the § 2255 petition, so be it. I grant that request.¹

Amico is not entitled as a matter of right to appointment of counsel just because he has filed a petition under 28 U.S.C. § 2255, a collateral proceeding and, therefore, I decline to appoint counsel, at this time.


CONCLUSION

The motions to stay execution of the sentence (Dkt. # 653 and # 654) are in all respects denied.

Amico's present counsel's motion to withdraw as counsel from the recently filed petition pursuant to 28 U.S.C. § 2255 is granted.

The motion to appoint new counsel (Dkt. # 654) for Robert Amico on the 28 U.S.C. § 2255 petition is denied, at this time.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
April 17, 2008.

¹ Since Amico has filed a direct appeal from the Judgment and Commitment, it is up to the United States Court of Appeals for the Second Circuit as to whether they wish to allow trial counsel to withdraw from the appeal.